

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote Consistency in
Methodology and Input Assumptions in Commission
Applications of Short-run and Long-run Avoided Costs,
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**REPLY COMMENTS OF
THE CALIFORNIA WIND ENERGY ASSOCIATION
ON THE ALTERNATE PROPOSED DECISION
OF COMMISSIONER GRUENEICH**

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SUBJECT INDEX

Page

<u>INTRODUCTION AND OVERVIEW</u>	1
<u>DISCUSSION</u>	1
I. The Commission Should Reject Utility Arguments In Support Of The NP-15/SP-15 Market Clearing Prices and Adopt CCC's Proposal To Ascribe No More Than One Third Weight To These Prices In The SRAC Formula.	1
II. The Commission Should Adopt CCC's Proposal To Employ An Administrative Heat Rate For SCE Equal To 9,705 Btu/kWh.	3
III. SCE's Arguments In Support Of A Retroactive Application Of The New SRAC Pricing Formula Should Be Rejected.	4
V. TURN's Proposed Limit For Expiring Contracts Should Be Clarified.....	5

TABLE OF AUTHORITIES

Page

Cases

D.04-01-050	5
D.05-12-009	5
D.03-12-062	4
D.04-07-037	4
<i>Southern California Edison Co. V. Public Utilities Comm'n</i> , 128 Cal.App.4 th 1 (2005)	4

Statutes

18 C.F.R. § 292.304 (b)(5)	4
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Other Authorities

CAISO Amendment 72	2
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Rules

Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission	1
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INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the California Wind Energy Association ("CalWEA") submits these reply comments on the Alternate Proposed Decision of Commissioner Grueneich ("Alternate PD").

DISCUSSION

I. The Commission Should Reject Utility Arguments In Support Of The NP-15/SP-15 Market Clearing Prices and Adopt CCC's Proposal To Ascribe No More Than One Third Weight To These Prices In The SRAC Formula.

CalWEA fully supports the CCC's proposal to use the heat rates derived from NP-15 and SP-15 market clearing prices for no more than one third of the SRAC heat rate calculation. The Alternate PD correctly finds that current NP-15 and SP-15 market clearing prices are not reasonable measures of avoided cost. Using them for one half the value of the SRAC heat rates is not appropriate. Although PG&E and SCE try to refute the Alternate PD's conclusions regarding the problems with NP-15 and SP-15 market clearing prices as measures of SRAC, their arguments are without merit and should be rejected.

For example, SCE argues that because out-of-the-market RMR and MOO generation costs are capacity-related costs, they are not relevant to the SRAC energy price determination.¹ This argument fails for two reasons. First, it misses the point. As the Alternate PD correctly observes, the primary issue with RMR and MOO dispatches is that they shift the supply curve and cause market prices to appear lower than they otherwise would be if these resources were in the market: "To the extent that some portion of market demand is satisfied by these out-of-market purchases, the remaining demand will intersect the supply curve at a lower point, yielding a lower market clearing price than what would result were all demand met through market purchases."² Second, SCE's argument is just plain wrong. While there certainly are capacity costs associated with RMR and MOO generation, there also are substantial above-market energy costs associated with these resources and these energy costs are not reflected in

¹ SCE Comments at 6.

² Alternate PD at 61.

NP-15 and SP-15 market prices.³ Indeed, units dispatched under RMR and MOO obligations are generally the least efficient units on the system;⁴ that is why they must be dispatched outside of the market.

Additionally, both SCE and SDG&E assert that the utilities are unable to underschedule resources in light of CAISO Amendment 72, and SCE even cites QF witness Cavicchi's testimony in support of this contention.⁵ While the QF's Lexecon witnesses did acknowledge that CAISO Amendment 72 requires the utilities to schedule within a 5% degree of forecasted accuracy, they also testified that this 5% flexibility is still a cause of significant concern.⁶ And, SDG&E itself points out that since Amendment 72 has been implemented there has been "a pattern of overscheduling".⁷ The very fact that there is a pattern of a mismatch between scheduled and actual consumption demonstrates the point: the NP-15 and SP-15 markets are subject to manipulation.⁸ Moreover, as the Alternate PD correctly observes, if SRAC energy prices are tied directly to market clearing prices, the utilities will have a powerful incentive to use their undeniable monopsony power to influence prices and lower QF payments.⁹ As Mr. Cavicchi stated, even a small change in price can have a significant impact over the large amount of QF payments.¹⁰

Finally, PG&E claims that there have been "substantial changes" in the market regarding "PG&E's alternative sources of supply" since the administrative heat rates were adopted.¹¹ CalWEA will agree that there are new market institutions and new power plant owners today, but there is

³ CCC/Beach, Ex. 103, at 23:9. In addition, Attachment RTB-2 of Ex. 103 is Chapter 6 from the CAISO's 2004 *Annual Report*, on 2004 intrazonal congestion costs, including the energy-related costs associated with the must-offer obligation and RMR contracts. The CAISO's 2004 energy-related intrazonal costs totaled \$426 million (*see* Table 6.7). These include minimum load compensation costs (Table 6.1) associated with the MOO and energy costs under RMR contracts (Tables 6.3 and 6.7).

⁴ CCC/Beach, Ex. 103, at 22:14-23:13.

⁵ SCE Comments at 6. SDG&E Comments at 8-9.

⁶ IEP/CAC/EPUC/CAC/Reishus, Transcript at 3347:24-27.

⁷ SDG&E Comments at 8-9.

⁸ IEP/CAC/EPUC/CAC/Cavicchi, Transcript at 3348:6-15.

⁹ Alternate PD at 62.

¹⁰ IEP/CAC/EPUC/CCC/Reishus & Cavicchi, Ex., 42, at 4.

¹¹ PG&E Comments at 3.

absolutely no basis for PG&E's implication that underlying market fundamentals have changed substantially. In fact the converse is true. Most of the same thermal units that operated on the margin during the mid-1990s are still operating on the margin today, most under RMR or resource adequacy contracts or MOO dispatches.¹² While a number of new units built since the mid-1990s, there also has been substantial load growth. The record clearly demonstrates that true system heat rates are not substantially lower today than they were in the mid-1990s.¹³

II. The Commission Should Adopt CCC's Proposal To Employ An Administrative Heat Rate For SCE Equal To 9,705 Btu/kWh.

CalWEA also supports CCC's proposal to abandon the interim SCE heat rate of 9,140 Btu/kWh and to adopt a more realistic administrative heat rate for SCE of 9,705 Btu/kWh. As CCC states, the 9,140 value was never intended to be permanent and should have been replaced years ago by a more realistic administrative value. Even SCE argues in its comments that a heat rate of "9,140 Bth/kWh in the MIF generates prices that bear no relationship to the avoided cost of energy"¹⁴ Averaging the heat rates in effect since the inception of the Transition Formula for SCE is a reasonable approach to determining the SCE administrative heat rate and the resulting 9,705 Btu/kWh is a reasonable value.

III. SCE's Arguments In Support Of A Retroactive Application Of The New SRAC Pricing Formula Should Be Rejected.

Alone among the utilities and ratepayer advocates, SCE continues to try to reduce retroactively SRAC energy payments.¹⁵ SCE's only argument is that the current SRAC formula has yielded payments to QFs that exceed SP-15 market prices, which SCE equates to its avoided costs. As the Alternate PD correctly states, however, SP-15 market prices are not the same as SCE's avoided costs and are likely to understate such avoided costs for a variety of reasons.¹⁶ This conclusion is supported by recent Commission decisions that (i) reject attempts by SCE to impose retroactive adjustments on

¹² CCC/Beach, Ex. 102, at 31:7-32:10; CCC/Beach, Ex. 103, at 23:2-4.

¹³ CCC/Beach, Ex. 102, at Tables 1, 4, 5, 6 and at pages 29-34.

¹⁴ SCE Comments at 9-11.

¹⁵ SCE Comments 14-15.

¹⁶ Alternate PD at 61-63.

QFs and otherwise frustrate the Commission's QF policies, (ii) find that SRAC prices do not necessarily equate to market prices, and (iii) clarify that the Commission's prior rulings (one of which is cited by SCE) should not be construed to mean that the current formula violates PURPA.¹⁷ As the Commission has stated:

SCE overstates the findings in the decisions concerning the SRAC formula. Although we were clear in D.03-12-062 on the need for SRAC prices to be reviewed, we did not state they are inadequate or in violation of PURPA. D.03-12-062 stated the utilities have "paid too much for QF power *in certain time periods relative to market prices...*" (D.03-12-062, at p. 56 (emphasis added).) As CCC notes, spot market prices are not necessarily the same as avoided costs, and therefore this is not a statement that avoided cost has been exceeded. Furthermore, PURPA does not require that QF prices be less than avoided cost at all times. Rather, PURPA requires a reasonable approximation of avoided costs over time. (18 C.F.R. § 292.304 (b)(5).)¹⁸

These Commission conclusions were upheld by the Court of Appeal, which rejected SCE's challenge to the underlying decision and concluded that: SCE "paints with an exceedingly *broad brush*" and that it "would be a quantum leap to conclude, as urged by Edison, that PURPA was violated when the CPUC merely criticized the SRAC formula" ¹⁹

As the Alternate PD concludes, there is no evidence in the record demonstrating that the current SRAC methodology violated PURPA.²⁰ SCE's retroactivity request should be denied.

V. TURN's Proposed Limit For Expiring Contracts Should Be Clarified.

TURN asks the Commission to clarify the statement that QFs with expiring contracts are eligible for the new firm and as-available contracts. In particular, TURN proposes that the Commission state that only QFs with contracts expiring "within the next 12 months" are eligible for

¹⁷ D.04-07-037, at 6-7.

¹⁸ Id.

¹⁹ *Southern California Edison Co. V. Public Utilities Comm'n*, 128 Cal.App.4th 1 (2005), at 11.

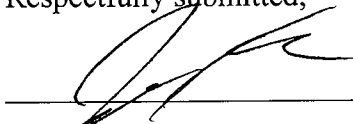
²⁰ Alternate PD at 10.

the new contracts.²¹ CalWEA does not object to TURN's proposal subject to two clarifications.

First, the words "within the next 12 months" should be changed to "within 12 months from the date the QF seeks the new contract" so as to avoid a potential interpretation that "within the next 12 months" could be interpreted to mean "within 12 months of the Commission's decision in this proceeding." Counsel for CalWEA inquired with TURN as to the intention of TURN's proposal and believes that it comports with the CalWEA's interpretation as set forth above.

Second, TURN's proposal should not apply to any QF that is currently operating under a 5-year RSO1 contract adopted pursuant to Decisions 04-01-050 or 05-12-009. Because of the interim nature of these RSO1 contracts, which contain only as-available capacity payments, these QFs should have the right to enter into a new standard offer contract that will take effect upon the expiration or early termination of their RSO1 contracts. For QFs that desire to transition from the as-available RSO1 option to the new, firm contract option, and for ratepayers that value contracts with firm capacity performance standards, for example, CalWEA expects that this would be in everyone's interests.

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²¹ TURN Comments at 5-6.

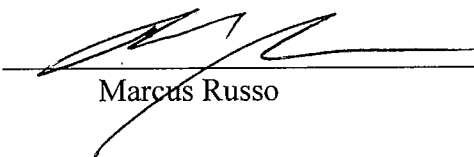
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Executed on September 17, 2007, at San Francisco, California.



Marcus Russo

CALIFORNIA PUBLIC UTILITIES COMMISSION

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Top of Page

Back to INDEX OF SERVICE LISTS

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Top of Page

Back to INDEX OF SERVICE LISTS